

## REMARKS

A restriction requirement was made to pending claims 2, 8 and 14. The Examiner reasons that these claims are drawn to multiple TGF $\beta$ 2 nucleic acids and although the claimed sequences share a common utility of targeting and binding to TGF $\beta$ 2, the sequences are considered to be unrelated since each sequence claimed is independent and distinct due to its unique nucleotide sequence. From this the Examiner concludes that "Markush/genus of sequences in claims 2, 8 and 14 is not considered to constitute a proper genus, and is therefore subject to restriction." As such Applicants are required to elect one sequence for examination.

The Examiner further provides that claims 1, 7 and 13 link the inventions in claims 2, 8 and 14 and upon allowance of the linking claims the restriction requirement as to the linked inventions shall be withdrawn. For the reasons discussed below, Applicant respectfully traverses the restriction of claims 2, 8 and 14 to one sequence. As required by 37 CFR § 1.143, however, Applicant provisionally elects SEQ ID NO:115.

In a telephone conversation with the Examiner on July 6, 2005 in a related case (U.S. Application Serial No. 10/429,176) the undersigned explained to the Examiner that restriction of the nucleic ligands identified by the SELEX process to only one sequence was an issue that the Applicant had encountered several times previously. A good deal of time and effort by both Applicant and Patent Office Examiners had been expended to resolve this issue on a general level in order that it would not have to be considered in every application that contained claims to multiple nucleic acid ligand sequences. The Examiner agreed to review documents from the prosecution history of the patent where the general policy for the examination of these cases was set. As the same rejection has been raised by the Examiner in the instant case, Applicant has once again attached as Exhibit A the argument presented by Applicant in USSN 09/791,301 (now U.S. Pat. No. 6,713,616) traversing the restriction of the nucleic acid ligands identified by the SELEX process to one sequence. Also attached, as Exhibits B and C, is the Examiner's response to Applicants traversal of the restriction requirement. As can be seen in Exhibit C, upon reconsideration and withdrawal of the restriction requirement the Examiner concluded as follows "no nucleic acid ligands sequences would be searched in view of the findings in the

Patent Office and in the office of applicant's representative that nucleic acid ligand sequences are not found among the coding sequences in the public databases." While this decision was meant as guidance to the Examiner who was at the time examining most of the SELEX aptamer applications, it should be helpful guidance going forward for all Examiners addressing the same issues.

Regarding Exhibit A, a representative of the assignee of the instant application recently asked some of their scientists to review and confirm the accuracy of the arguments presented by Applicant in USSN 09/791,301 traversing the restriction of the nucleic acid ligands identified by the SELEX process to one sequence. As a result of this review, Applicant would like to clarify that the argument beginning in the last paragraph of page 6 and continuing through page 8 assumes that the selection is conducted from a pool of molecules generated from an independent synthesis. If, however, aliquots of the same pool are used for multiple selections against the same target, there is a chance of obtaining the same sequence from independent selections. Applicant maintains that this scenario obviously cannot be the case when comparing Applicant's aptamers against the prior art aptamers of third parties. Applicant also maintains that this does not affect Applicant's general analysis and conclusion that it would not be unduly burdensome to search at most only data bases that list nucleic acid ligands to the same target. Finally, Applicant maintains that this point of clarification does not affect the Examiner's findings as set forth in Exhibit C that "nucleic acid ligand sequences are not found among the coding sequences in the public databases."

Applicant would appreciate it if the Examiner would review these documents and reconsider the restriction of claims 2, 8 and 14 to one sequence. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

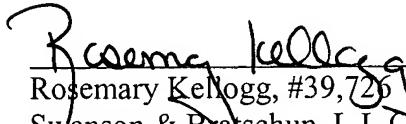
This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117 if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or

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Amdt. dated November 30, 2005  
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any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date: November 30, 2005

  
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Enclosures: Exhibits A-C

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